

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
TIM K. UMFLEET and)	Bankruptcy Case No. 00-60039
MARILYN A. UMFLEET,)	
)	
Debtors.)	
<hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>		
)	
WALTER RAY BUSS,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Case No. 00-6024
)	
TIM K. UMFLEET and)	
MARILYN A. UMFLEET,)	
)	
Defendants.)	

OPINION

This matter having come before the Court for trial on a Complaint Objecting to Discharge Under Section 523/Section 727 filed by the Plaintiff, on May 22, 2000; the Court, having heard arguments of Plaintiff and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on January 18, 2000. Among their creditors, the Debtors scheduled the Plaintiff, Walter Ray Buss, as an unsecured creditor on Schedule F of their bankruptcy petition for a debt in the sum of \$90,000. The debt to Walter Ray Buss was shown as a merchant note, with the amount accumulating between the period of 1996 and 1999. The debt arose

in connection with the businesses of the Debtors operated under the names of Umfleet's Antiques and County Line Liquidators.

The instant adversary proceeding was filed by the Plaintiff, Walter Ray Buss, on May 22, 2000, requesting that the Court find the debt to Walter Ray Buss to be non-dischargeable under 11 U.S.C. § 523(a)(4), and, in the alternative, that the Debtors' discharge be denied under numerous sections of 11 U.S.C. § 727. The Complaint consisted of ten Counts. The record reflects that a summons was duly issued on May 22, 2000, and that the Debtors filed an Answer generally denying the allegations of the Complaint on June 21, 2000. A pre-trial hearing was held on July 21, 2000, at which time the Defendants were personally present, together with their then-counsel, L. Kaye DeSelms, and the matter was scheduled for trial on October 6, 2000, at 9:00 a.m., in Effingham, Illinois. The parties were given the standard pre-trial Order, and no requests for continuances were made.

On the scheduled trial date of October 6, 2000, the Plaintiff, Walter Ray Buss, appeared, together with his attorney, Charles C. Roberts, and was prepared to proceed to trial. However, neither of the Defendants appeared on the scheduled trial date, even though the record reflects that they were clearly notified of the date, time, and location for the trial and of their need to appear and present defense to the Complaint.

Based upon the Defendants' failure to appear at trial on October 6, 2000, counsel for the Plaintiff, Charles C. Roberts, made an oral motion that the Court enter a default judgment against the Defendants on the Complaint that was filed May 22, 2000. The Court has reviewed the Complaint which was filed and finds that it was a verified Complaint and that, as such, entry of default judgment against the Defendants for their failure to appear and defend on the Complaint should be allowed, with judgment to enter in favor

of the Plaintiff, Walter Ray Buss, in the sum of \$89,000, plus costs of this suit. Further, the Court finds that the Debtors' discharge should be denied pursuant to 11 U.S.C. §§ 727(a)(2)(A), 727(a)(3), 727(a)(4)(D), 727(a)(6)(C), 727(a)(4)(A), and 727(a)(5). The Court also notes that default judgment is proper and appropriate on Count I of the Complaint under 11 U.S.C. § 523(a)(4), finding that the debt in question is non-dischargeable.

ENTERED: October 18, 2000.

/s/ Gerald D. Fines
United States Bankruptcy Judge